



**NEVADA COMMISSION ON ETHICS  
EXECUTIVE DIRECTOR'S REPORT AND RECOMMENDATION  
REGARDING JUST AND SUFFICIENT CAUSE**

REQUEST FOR OPINION NO. 04-82
SUBJECT: LYNNE TRUJILLO TEACHER CARSON CITY SCHOOL DISTRICT

**A. JURISDICTION:**

In her occupation as a teacher, Lynne Trujillo is a public employee as defined by NRS 281.436. As such, the Commission has jurisdiction over the complaint.

**B. REPORT OF INVESTIGATIVE ACTIVITIES:**

- Reviewed Request for Opinion 04-82 (See Tab E)
- Reviewed subject's response dated December 16, 2004 (See Tab F)
- Reviewed prior Commission opinions (See Tab G)
- Interviewed Todd Russell, legal counsel for the Carson City School District and Kathy Adair, Principal of Mark Twain Elementary School

**C. RECOMMENDATIONS:**

1. Based on investigative activities, it is recommended that the Panel find that sufficient cause **EXISTS** for the Commission to hold a hearing and render an opinion in this matter relating to the provisions of:
  - NRS 281.481(7).

**SPECIFIC REASON(S):**

Sufficient credible evidence exists that amounts to or supports a potential violation by a public employee of the above provision of NRS Chapter 281.

2. Based on investigative activities, it is recommended that the Panel find that sufficient cause **DOES NOT EXIST** for the Commission to hold a hearing and render an opinion in this matter relating to the provisions of:
  - NRS 281.554.

**SPECIFIC REASON(S):**

No allegation or credible evidence of any fact exists that amounts to or supports a potential violation by a public employee of the above provisions of NRS Chapter 281.

**D. SUMMARY OF REQUEST FOR OPINION:**

The complaint alleges violations of NRS 281.481(7) and NRS 281.554 by Lynne Trujillo, a teacher employed by the Carson City School District (CCSD). The complaint specifically alleges Ms. Trujillo violated provisions of the Ethics in Government Law by using CCSD computers, web mail, bulletin boards, and campus facilities to organize campaign events for Bonnie Parnell, a 2004 candidate for the Assembly District 40 seat, in violation of NRS 281.481(7) and NRS 281.554.

The complaint alleges Ms. Trujillo used CCSD computers and photocopiers to produce a flyer in support of the teachers' union attempt to organize a "teacher walk" in support of candidate Bonnie Parnell, and then disseminated the flyers in school facilities.

**E. SUMMARY OF SUBJECT'S RESPONSE:**

In her response, Ms. Trujillo denied violating both NRS 281.481(7) or NRS 281.554 and provided the following information in support of this assertion:

1. Ms. Trujillo is not a public employee because she is an employee of the CCSD, an independent political entity, and thus should not be governed by these statutes.
2. Ms. Trujillo, while an employee of the CCSD, also serves as a building representative of the Ormsby County Education Association (OCEA). OCEA is an employee organization and the recognized collective-bargaining agent for the employees of the CCSD.
3. OCEA regularly communicates with members of their organization and all licensed employees of the CCSD regarding matters of concern to them, including state legislators and legislative campaigns.
4. OCEA decided to organize two neighborhood walks for anyone who wanted to participate in support of Ms. Parnell.

5. Article 8.1 of the collective-bargaining agreement between OCEA and the CCSD provides that “OCEA shall have the right to use school mailboxes and the inter-school mail services for organizational material, provided that all such material is clearly identified and the Association accepts the responsibility for such material.”
6. As a matter of practice, the CCSD and school administrators have allowed OCEA to use school facilities and equipment for similar activities. This includes the use of the bulletin boards to post fliers, the use of the school photocopy machines and computer printers, and the use of the CCSD’s email system to send messages to OCEA members and other employees.
7. Ms. Trujillo and other teacher representatives have been both allowed and required to meet with administrative employees of the CCSD during school hours to discuss grievances.
8. Ms. Trujillo did prepare on her home computer and print a flier detailing the date and time of a walk in support of Ms. Parnell.
9. During Ms. Trujillo’s “prep period” at school, she made 40 copies of the flier on a copier at Mark Twain Elementary School then distributed the flier into the teacher’s mailboxes and posted them on OCEA bulletin boards.
10. Ms. Trujillo’s activities took no more than a few minutes in time.
11. Ms. Trujillo believes that these activities are in line with and permitted by the collective bargaining agreement between the CCSD and OCEA.
12. Ms. Trujillo has in the past used the photocopier similarly and has never been advised not to use it by administration.
13. The CCSD’s legal counsel opined the conduct of Ms. Trujillo did not violate any policy or regulation of the CCSD.

#### **F. PERTINENT STATUTES AND REGULATIONS:**

**NRS 281.481 General requirements; exceptions.** A code of ethical standards is hereby established to govern the conduct of public officers and employees.

\* \* \* \* \*

7. A public officer or employee, other than a member of the Legislature, shall not use governmental time, property, equipment or other facility to benefit his personal or financial interest. This subsection does not prohibit:

(a) A limited use of governmental property, equipment or other facility for personal purposes if:

(1) The public officer who is responsible for and has authority to authorize the use of such property, equipment or other facility has established a policy allowing the use or the use is necessary as a result of emergency circumstances;

(2) The use does not interfere with the performance of his public duties;

(3) The cost or value related to the use is nominal; and

(4) The use does not create the appearance of impropriety;

(b) The use of mailing lists, computer data or other information lawfully obtained from a governmental agency which is available to members of the general public for nongovernmental purposes; or

(c) The use of telephones or other means of communication if there is not a special charge for that use.

If a governmental agency incurs a cost as a result of a use that is authorized pursuant to this subsection or would ordinarily charge a member of the general public for the use, the public officer or employee shall promptly reimburse the cost or pay the charge to the governmental agency.

\* \* \* \* \*

**NRS 281.554 Public officer or employee prohibited from requesting or otherwise causing governmental entity to incur expense or make expenditure to support or oppose ballot question or candidate in certain circumstances.**

1. Except as otherwise provided in subsections 4 and 5, a public officer or employee shall not request or otherwise cause a governmental entity to incur an expense or make an expenditure to support or oppose:

(a) A ballot question.

(b) A candidate.

2. For the purposes of paragraph (b) of subsection 1, an expense incurred or an expenditure made by a governmental entity shall be considered an expense incurred or an expenditure made in support of a candidate if:

(a) The expense is incurred or the expenditure is made for the creation or dissemination of a pamphlet, brochure, publication, advertisement or television programming that prominently features the activities of a current public officer of the governmental entity who is a candidate for a state, local or federal elective office; and

(b) The pamphlet, brochure, publication, advertisement or television programming described in paragraph (a) is created or disseminated during the period specified in subsection 3.

3. The period during which the provisions of subsection 2 apply to a particular governmental entity begins when a current public officer of that governmental entity files a declaration of candidacy or acceptance of candidacy and ends on the date of the general election, general city election or special election for the office for which the current public officer of the governmental entity is a candidate.

4. The provisions of this section do not prohibit the creation or dissemination of, or the appearance of a candidate in or on, as applicable, a pamphlet, brochure, publication, advertisement or television programming that:

(a) Is made available to the public on a regular basis and merely describes the functions of:

(1) The public office held by the public officer who is the candidate; or

(2) The governmental entity by which the public officer who is the candidate is employed; or

(b) Is created or disseminated in the course of carrying out a duty of:

(1) The public officer who is the candidate; or

(2) The governmental entity by which the public officer who is the candidate is employed.

5. The provisions of this section do not prohibit an expense or an expenditure incurred to create or disseminate a television program that provides a forum for discussion or debate regarding a ballot question, if persons both in support of and in opposition to the ballot question participate in the television program.

6. As used in this section:

(a) "Governmental entity" means:

- (1) The government of this state;
- (2) An agency of the government of this state;
- (3) A political subdivision of this state; and
- (4) An agency of a political subdivision of this state.

(b) "Pamphlet, brochure, publication, advertisement or television programming" includes, without limitation, a publication, a public service announcement and any programming on a television station created to provide community access to cable television. The term does not include:

- (1) A press release issued to the media by a governmental entity; or
- (2) The official website of a governmental entity.

(c) "Political subdivision" means a county, city or any other local government as defined in NRS 354.474.

## **G. RESULTS OF INVESTIGATION:**

### ***Allegations regarding violations of NRS 281.481(7):***

NRS 281.481(7) provides that a public officer or employee shall not use governmental time, property, equipment or other facility to benefit his personal or financial interest.

Opinions previously issued by Commission on Ethics relating to NRS 281.481(7) tend to focus on the element of undue pressure that might exist, and which would serve to further the interests of the public officer. In *NCOE Opinion No. 01-08A*, the Commission opined that where the subject, Mr. Barrett, was acting as a union president, it was his role to mobilize union members. However, when he became the Chief of the Clark County Facilities Division, political mobilization of *his subordinates* would be seen as outside of and in conflict with his duties as a public officer (See Tab G).

Although Ms. Trujillo is the building representative of OCEA, her public employee role is that of teacher, on the same level as the people to whom she sent the messages. Unlike the circumstances with Barrett, who had subordinates under him that he was attempting to mobilize, Ms. Trujillo does not have any such subordinates. She is on the same hierarchical level as the other teachers to whom the flyers were delivered. Thus, under this set of facts and circumstances there does not appear to be any evidence of undue influence that would tend to implicate the statute.

However, Ms. Trujillo's actions may not fall within the exemptions provided within NRS 281.481(7), to wit:

"This subsection does not prohibit:

(a) A limited use of governmental property, equipment or other facility for personal purposes if:

(1) The public officer who is responsible for and has authority to authorize the use of such property, equipment or other facility has established a policy allowing the use or the use is necessary as a result of emergency circumstances;

(2) The use does not interfere with the performance of his public duties;

(3) The cost or value related to the use is nominal; and

(4) The use does not create the appearance of impropriety;

(b) The use of mailing lists, computer data or other information lawfully obtained from a governmental agency which is available to members of the general public for nongovernmental purposes; or

(c) The use of telephones or other means of communication if there is not a special charge for that use.”

As Ms. Trujillo points out, the CCSD has an established policy, vis-à-vis the OCEA contract with CCSD, allowing the OCEA to use facilities and equipment. However, a personal interview with CCSD legal counsel Todd Russell revealed that although he had publicly addressed use of the CCSD e-mail system at the October 26, 2004 school board meeting, he was not asked to address the use of photocopiers, paper, or other school resources. Further, Mr. Russell was not asked to address the use of a prep period in conducting union activities. Mr. Russell indicated he did not believe the use of photocopiers or paper purchased by the CCSD would fall within the OCEA contract provisions relating to use of facilities (see Article 8 of contract). Further, Mr. Russell stated the prep period is a designated time for faculty to prepare for their teaching activities, and it would not be appropriate to utilize a prep period to conduct union business.

Ms. Trujillo submits that she prepared the Bonnie Parnell flyer on her home computer on her own time, and there is no evidence which indicates otherwise. However, Ms. Trujillo also states she made 40 copies of the flyer using the Mark Twain Elementary School photocopier during her prep period, and then distributed the flyers in faculty mailboxes. Though distribution of the flyer utilizing faculty mailboxes is permissible under Article 8.1 of the contract, the use of the school photocopier and her prep period time would not appear to be similarly authorized.

A personal interview with Mark Twain Principal Kathy Adair indicated Ms. Adair did not believe the school photocopiers should be utilized to copy union-related materials. Ms. Adair noted she had been made aware of the use by Ms. Trujillo after the fact, and would have counseled against said use had she been consulted prior to same. Ms. Adair also pointed out the cost of 40 copies is nominal, especially given the fact that the school makes more than 150,000 copies per year at approximately one (1) cent per page. Ms. Adair said she is personally aware that Ms. Trujillo makes many copies for school business at her own, personal expense, and that she was confident this incident was isolated and an honest oversight on Ms. Trujillo’s part.

As Ms. Trujillo utilized her prep period to copy and distribute the flyer, the possibility exists that this could have interfered with her duties as a public employee. There appears to be a de minimis or nominal cost relating to both Ms. Trujillo's salary during her prep period, as well as to the cost of the 40 photocopies.

Finally, although the complaint suggests the appearance of impropriety, Ms. Trujillo argues there can be no such appearance when her conduct complied with the established policy and contractual agreement allowing OCEA to use CCSD facilities and equipment. Ms. Trujillo argues her actions were consistent with the policy, and therefore she could reasonably conclude her actions would not violate subsection (a)(4). However, as noted above, Mr. Russell indicated that although the use of the e-mail system was permissible under the union contract, use of a prep period or other resources such as a photocopier would not be similarly authorized.

It appears that the four conjunctive criteria set forth in NRS 281.481(7)(a) were not met as they relate to the photocopying of the flyer and the use of the prep period to copy and distribute the flyer. The Executive Director believes sufficient credible evidence exists to present these issues to the full Commission. Only the full commission has the authority to determine if the conduct of Ms. Trujillo in relation to these issues rises to the level of a violation of state law.

Therefore, the Executive Director recommends credible evidence exists to substantiate a potential violation of NRS 281.481(7). Accordingly, the Executive Director recommends the panel find just and sufficient cause exists for the Commission to hold a hearing and render an opinion regarding whether Ms. Trujillo violated the provisions of NRS 281.481(7).

***Allegations regarding violations of NRS 281.554:***

NRS 281.554 prohibits a public officer or employee from causing a governmental entity to incur an expense or make an expenditure to support or oppose a ballot question or candidate. Subsection (2)(a) further provides that an expense or expenditure is one that is incurred for the creation or dissemination of a pamphlet, brochure, publication, advertisement, or television program *that features the activities of a current public officer of the governmental entity* who is a candidate for a state, local or federal elective office... Candidate Bonnie Parnell was not a *public officer of the governmental entity*, to wit, the CCSD. Thus, NRS 281.554 is not applicable to this specific set of facts and circumstances.

Therefore, the Executive Director recommends no credible evidence exists to substantiate a potential violation of NRS 281.554. Accordingly, the Executive Director recommends the panel find just and sufficient cause does not exist for the Commission to hold a hearing and render an opinion regarding whether Ms. Trujillo violated the provisions of NRS 281.554.

**H. CONCLUSION:**

The Executive Director hereby recommends the panel find just and sufficient cause exists for the Commission to hold a hearing and render an opinion on the allegations that the subject violated NRS 281.481(7).

Furthermore, the Executive Director hereby recommends the panel find just and sufficient cause does not exist for the Commission to hold a hearing and render an opinion on the allegations that the subject violated NRS 281.554, and further that these allegations be dismissed.

**DATED:** June 27, 2005

Stacy M. Jennings  
**STACY M. JENNINGS, MPA**  
**EXECUTIVE DIRECTOR**